

**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title) and date last adopted:

- **AD 8113.1 Carbon Electrodes (September 11, 1986);**
- **AD 8132.1 Service trucks used by car dealers (September 11, 1986);**
- **AD 8132.2 Use tax on loaned vehicles (September 16, 1989);**
- **AD 8164.1 Special business tax classification for insurance agents (June 27, 1984);**
- **AD 8167.1 Tax liability of nursery schools, day care and preschools (March 11, 1985);**
- **AD 8174.1 Use tax—Trucks and trailers used in interstate commerce (April 7, 1992);**
- **AD 8187.1 Factoring tax from food vending machines (October 12, 1987);**
- **AD 8211.4 Lease or sale of irrigation circles (June 16, 1986);**
- **AD 8227.1 Advertising income—Cable television producers (November 13, 1985); and**
- **AD 8243.1 Litter tax reporting by fast food restaurants (April 20, 1987).**

Reviewer: **Alan R. Lynn**

Date review completed: **June 6, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If “YES”, provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an “x” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

- **AD 8113.1 explains that the Department had decided to not appeal a BTA decision ruling that carbon electrodes used in the production of steel were an ingredient and not subject to either the retail sales or use tax;**
- **AD 8132.1 and 8132.2 explain the use tax implications with respect to the use of service trucks and loaner cars by auto dealers.**
- **AD 8164.1 explains that the special tax rate for insurance agents, brokers, and solicitors that are licensed under Chapter 48.17 RCW applies to automobile dealers because they are required to be licensed under chapter 48.17 RCW for the sale of insurance;**
- **AD 8167.1 explains that the Department changed its policy with respect to the taxability of nursery schools, day cares, and preschools. This document explains that these entities are not required to remit B&O tax on income derived from providing care to children of kindergarten age or below (exempt under RCW 82.04.4282), even if they also provide care to older children. The Department had previously allowed the B&O tax deduction only if the nursery school, day care, or preschool provided care only to children below the first grade level;**

- AD 8174.1 explains that Department of Licensing depreciation schedules used to determine the value of vehicles based on years of service may be used as a guide when determining the value of motor vehicles or trailers failing to satisfy the statutory requirement that they be “substantially” used in interstate commerce. The document also includes three depreciation schedules;
- AD 8187.1 explains that retail sales tax can be factored out of vending machine receipts for taxable food products;
- AD 8211.4 explains that the Washington Court of Appeals reversed an earlier Board of Tax appeals decision and ruled that center pivot irrigation systems and appurtenances are realty when sold with the land. This document also explains that the 1983 Legislature provided a retail sales tax exemption under certain circumstances for the lease of irrigation equipment;
- AD 8227.1 explains that the advertising revenue received by cable television producers is taxable under the radio and television broadcasting tax classification; and
- AD 8243.1 explains that the provisions of ETB (now ETA) 445 applies to fast food establishments. ETA 445 explains that the litter tax does not apply if food and beverages are sold for indoor consumption on the seller’s premises. AD 8243.1 further states that in the absence of specific records, auditors should consult with the taxpayer to determine a reasonable percentage of food products that are subject to the litter tax.

**2. Need:**

YES	NO	
	X	Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
X		Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
	X	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

**While the pertinent laws may not have changed, the following documents should be repealed as explained below:**

- AD 8113.1—The information provided in this document no longer serves a useful purpose, and can be misleading. As explained in WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale), to be considered an ingredient or component part material must become an essential and intended ingredient or component of the finished product;
- AD 8132.1 and 8132.2—This information is currently provided in WAC 458-20-132 (Automobile dealers/demonstrator and executive vehicles);
- AD 8164.1—There is no longer a need for this information. As explained in WAC 458-20-164 (Insurance agents, brokers and solicitors), every insurance agent, broker, or

solicitor licensed under chapter 48.17 RCW is subject to the special insurance agent and broker B&O tax rate.

- AD 8167.1—This information is currently provided in WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools);
- AD 8174.1—WAC 458-20-17401 (Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce) currently explains that in the absence of a readily available fair market value, the Department will accept a value based on depreciation schedules used by the Department of Licensing. In addition, the depreciation schedules provided in AD 8174.1 are out of date;
- AD 8187.1—This information is currently provided in WAC 458-20-243 (Food products);
- AD 8211.4—There is no longer any need for this document. The court's decision in Western Ag. vs. Department of Revenue, 43 Wn. App. 167, 716 P.2d 310, regarding the taxation of center pivot irrigation systems is uniformly understood and applied by the Department and agricultural industry. WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use) currently addresses the retail sales tax exemption provided to leased irrigation equipment (RCW 82.08.0257);
- AD 8227.1—As noted in the review document for WAC 458-20-227 (Subscriber television services), the information is currently provided in that rule; and
- AD 8243.1—This document is no longer needed. The practice of consulting with fast food retailers to determine the percentage of food and beverage sales subject to the litter tax is standard procedure for the Department.

### 3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**4. Clarity and Effectiveness:**

YES	NO	
		Is the document written and organized in a clear and concise manner?
		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
		Do changes in industry practices warrant repealing or revising this document?
		Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**5. Intent and Statutory Authority:**

YES	NO	
		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
		Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
		Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
		Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
		Does the document result in equitable treatment of those required to comply with it?
		Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
		Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

**10. Review Recommendation:**

\_\_\_\_\_ Amend

**X** Repeal

\_\_\_\_\_ Leave as is

\_\_\_\_\_ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

\_\_\_\_\_ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

**There is no longer any need for the audit directives included in this repeal. In most cases, the information or issues were subsequently incorporated or addressed in rules.**

**11. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed recommendation      \_\_\_\_\_ Accepted recommendation

\_\_\_\_\_ Returned for further action

Comments: